



DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 585

RIN 3141-AA75

Appeals to the Commission

AGENCY: National Indian Gaming Commission, Department of the Interior.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission proposes to amend its regulations to add a settlement process for appeals proceedings on written submissions to the Commission.

DATES: Written comments on this proposed rule must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any one of the following methods, however, please note that comments sent by electronic mail are strongly encouraged.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email comments to:* information@nigc.gov
- *Mail comments to:* National Indian Gaming Commission, 1849 C Street, NW., MS 1621, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Michael Hoenig at (202) 420-9241 (this number is not toll free).

SUPPLEMENTARY INFORMATION:

I. Background and Development of the Rule

A. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100-497, 25 U.S.C. 2701 *et seq.*, was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (“NIGC” or “Commission”) and set out a comprehensive framework for the regulation of gaming on Indian lands. IGRA, in several instances, requires that the Commission provide an opportunity for a hearing before it on: proposed fines, temporary closure orders, and removals of a certificate of self-regulation. Also through regulatory action, the Commission has afforded appeals before it for: notice of violations, modified and voided management contracts, and notices of late fees and late fee assessments. As to all these areas, part 585 of NIGC regulations offers appeals to the Commission on written submissions.

The Commission comprehensively updated the appeals regulations in 2012, consolidating them in one subchapter. (77 FR 58941-01). This proposed rule augments the appeals regulations by inserting a comprehensive settlement procedure for appeals under part 585, rectifying its absence in the current regulations.

B. Development of the Rule

On June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the appeals regulations in part 585. Prior to consultation, the Commission sent another Notice of Consultation, dated September 13, 2021, and released a proposed discussion draft of the regulations for review. The proposed amendments to these regulations were intended to solicit Tribes’ views on: 1) the Commission inviting, directing or granting leave to the Chair to file or respond to motions and 2) supplying a settlement procedure for appeals to the Commission on written submissions. The Commission held three virtual consultation sessions in September and October of 2021 to receive Tribal input on the possible changes. The Commission reviewed all comments received as part of the consultation process.

Commenters at the consultation phase requested the addition of language to the settlement procedures specifying that “the NIGC will consider any and all such requests to enter

into settlement negotiations in good faith.” The Commission declines to add this language. It is unclear whether this comment is directed to the full Commission, who will decide whether to grant a stay of proceedings for the purposes of settlement negotiations between the Chair and the other party, or whether this comment is directed at the Chair. In any event, in the context of agency adjudications, the U.S. Supreme Court found that agency members are presumed to act in good faith, with honesty and integrity. *See Withrow v. Larkin*, 421 U.S. 35, 47 (1975). Therefore, the addition is unnecessary.

Additionally, based on comments received, the Commission omitted the proposed change permitting the Chair to respond to motions. Instead, the Commission proposes to limit the motions that may be filed in proceedings before the Commission to those listed in the regulation and prohibit the Chair from responding.

II. Regulatory Matters

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget as required by 44 U.S.C. 3501, *et seq.*, and assigned OMB Control Number 3141-0003.

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its Tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (EO) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC’s consultation policy specifies that it will consult with Tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian Tribe on matters including, but not limited to the ability of an Indian Tribe to regulate its Indian gaming; an Indian Tribe’s formal relationship with the Commission; or the consideration of the Commission’s trust responsibilities to Indian Tribes.

Pursuant to this policy, on June 9 and September 13, 2021, the National Indian Gaming Commission sent Notices of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the appeals regulations. The Commission held three virtual consultation sessions in September and October of 2021 to receive Tribal input on the possible changes.

List of Subjects in 25 CFR Part 585

Administrative practice and procedure, Appeals Gambling, Indian-lands, Reporting and recordkeeping requirements.

Therefore, for reasons stated in the preamble, 25 CFR part 585 is amended as follows:

**PART 585—APPEALS TO THE COMMISSION ON WRITTEN SUBMISSIONS OF
NOTICES OF VIOLATION, PROPOSED CIVIL FINE ASSESSMENTS, ORDERS OF**

**TEMPORARY CLOSURE, THE CHAIR'S DECISIONS TO VOID OR MODIFY
MANAGEMENT CONTRACTS, THE COMMISSION'S PROPOSALS TO REMOVE A
CERTIFICATE OF SELF-REGULATION, AND NOTICES OF LATE FEES AND LATE
FEE ASSESSMENTS**

1. The authority citation for part 585 continues to read as follows:

Authority: 25 U.S.C. 2706, 2710, 2711, 2713, 2715, 2717

2. Revise § 585.4 to read as follows:

585.4 Are motions permitted?

(a) Only motions for extension of time under §580.4(f) of this subchapter, motions to supplement the record under §581.5 of this subchapter, motions to intervene under §585.5, and motions for reconsideration under §581.6 of this subchapter, are permitted.

(b) The Chair shall not, either individually or through counsel, respond to motions.

3. Add § 585.8 to read as follows:

§ 585.8 What is the process for pursuing settlement in an appeal to the Commission?

(a) *General.* At any time after the commencement of a proceeding, but before the date scheduled for the Commission to issue a final decision under § 585.7, the parties may jointly move to stay the proceeding for a reasonable time to permit negotiation of a settlement or an agreement disposing of the whole or any part of the proceeding.

(b) *Content.* Any agreement disposing of the whole or any part of a proceeding shall also provide:

(1) A waiver of any further proceedings before the Commission regarding the specific matter(s) settled under the agreement; and

(2) That the agreement shall constitute dismissal of the appeal of the specific matter(s) settled, a final order of the Commission, and final agency action.

(c) *Submission*. Before the expiration of the time granted for negotiations, the parties or their authorized representatives may:

(1) Notify the Commission that the parties have reached a full or partial settlement and have agreed to dismissal of all or part of the action, subject to compliance with the terms of the settlement agreement; or

(2) Inform the Commission that an agreement cannot be reached.

(d) *Disposition*. If the parties enter into a full or partial settlement agreement, it shall constitute: full or partial dismissal of the appeal, as applicable; a final order of the Commission; and final agency action.

Dated: August 2, 2022.

E. Sequoyah Simermeyer,
Chairman

Jeannie Hovland,
Vice Chair

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